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Federal Communications Commission
Office of the Secretary

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May 20, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

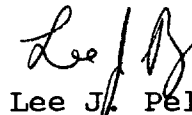
Re: File No. BPED-900606MC
Murrysville, PA

Dear Ms. Searcy:

Transmitted herewith, on behalf of He's Alive Incorporated, applicant for a non-commercial educational FM station at Murrysville, Pennsylvania on Channel 201A are an original and two (2) copies of its Opposition to Petitions to Deny.

Should further information be desired in connection with this matter, please contact the undersigned.

Very truly yours,



Lee J. Peltzman
Counsel for
HE'S ALIVE INCORPORATED

LJP:bpt
Enclosure
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MAY 20 1991

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Application of)
)
HE'S ALIVE, INCORPORATED) File No. BPED-900606MC
)
Construction Permit for a)
Non-Commercial Educational)
FM Station in Murrysville,)
Pennsylvania)

To: Chief, Mass Media Bureau

OPPOSITION TO PETITIONS TO DENY

He's Alive, Incorporated ("He's Alive"), applicant for a new non-commercial educational FM station at Murrysville, Pennsylvania, by its counsel, hereby opposes the Petition to Deny filed by WJAC, Incorporated ("WJAC") and Petition to Deny or Dismiss filed by Carnegie-Mellon Student Government Corporation ("CMSGC"). In support of its position, He's Alive states the following:

1. Both WJAC and CMSGC attack He's Alive's application on the basis that the proposed Murrysville station will cause interference to the off-air reception of Channel 6 Station WJAC-TV, Johnstown, Pennsylvania. WJAC estimates that interference will occur to an area of 32 square kilometers, encompassing a population of 7,948 persons. CMSGC argues that interference will occur in an area with a population of 4,012 persons.

2. CMSGC additionally contends that He's Alive did not have reasonable assurance of the availability of the proposed transmitter site. In support of its assertion, CMSGC includes a statement from its engineer, which claims that it had a

conversation with the president of the company which owns He's Alive's former site, and that he was informed that no one had contacted that individual concerning use of the tower for a new FM station at Murrysville.

3. He's Alive today is filing an amendment to its application which resolves any potential interference problem. According to that engineering, which involves relocating to a new transmitter site, interference to WJAC will occur in an area encompassing a population of 2,318 persons, well within the requirements of Section 73.525 of the rules. In view of this amendment, the protests filed by WJAC and CMSGC are no longer valid.

4. Additionally, that portion of the CMSGC Petition to Dismiss or Deny contending that He's Alive did not have reasonable assurance of its proposed transmitter site does not have a valid basis in law. That charge is based on the hearsay statement of CMSGC's consulting engineer, rather than the first hand knowledge of any individual. Moreover, as explained in the April 30, 1991 Declaration of He's Alive President, Dewayne Johnson, prior to filing its application, Mr. Johnson spoke with Neil Ardman, Chief Engineer of WPTT, who stated that, on behalf of WPTT, he could and would grant He's Alive reasonable assurance to use WPTT tower site.

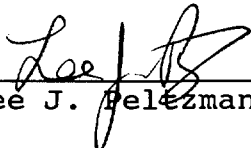
5. Dewayne Johnson's Statement is supported by a letter to Mr. Johnson from David D. Smith, President of Sinclair Broadcasting Group, Inc., owner of the WPTT tower site. Accordingly, there is no question that He's Alive operated in good faith in proposing to

use the WPTT tower for its station. In addition, in view of the fact that He's Alive has amended its application to a new site, there is no question but that it has reasonable assurance of an available transmitter site for its proposed station.

Accordingly, for the reasons stated herein, CMSGC's Petition to Dismiss or Deny and WJAC's Petition to Deny should be denied and He's Alive's application granted.

Respectfully submitted,

HE'S ALIVE, INCORPORATED

By: 

Lee J. Peletzman
Its Attorney

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May 20, 1991

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DECLARATION

I, Dewayne Johnson, am President of He's Alive Incorporated. The following statement is true and correct to the best of my knowledge and belief and is made under penalty of perjury.

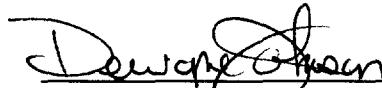
On June 6, 1990, He's Alive Incorporated filed an application for a non-commercial educational FM radio station at Murrysville, Pennsylvania. Prior to that time our engineers had given us a designated area in which a tower could be located. On or around April 16, 1990, I personally visited prospective sites within the designated area and noticed that the WPTT tower was within the area given to me by our engineers. I visited the studios of WPTT and asked to speak to the person in charge of the physical facilities. I was directed to an individual by the name of Neil Ardman, who identified himself as chief engineer of the station. I asked Mr. Ardman about the possibility of He's Alive Incorporated using WPTT's tower for its Murrysville station after Mr. Ardman represented that he was the person who had authority to discuss such matters. Mr. Ardman stated that on behalf of WPTT he could and would grant us approval to use the WPTT tower site. We discussed the fact that our rent would be the going rate and actually discussed what that rate was at the time, although we also agreed that we would work out specific rental details when He's Alive Incorporated received a grant of its Murrysville application.

Again, I want to make clear that Mr. Ardman represented at all times that there was plenty of available space on the WPTT tower and that he could grant us the necessary approval. He even gave us the coordinates of the tower so that we could, in turn, give them to our engineers for use in our application. In a letter I recently received from David Smith, President of Sinclair Broadcast Group, licensee of WPTT, Mr. Smith states that Neil Ardman apparently had made a habit of granting assurance to applicants, like He's Alive Incorporated, to use the WPTT tower site.

Clearly, there was no intent by myself or He's Alive Incorporated to misrepresent its use of the WPTT tower site. Not only would this have been a dishonest manner of proceeding and totally alien to the way that He's Alive Incorporated operates, but it would have made no sense at all for us to claim a site for which we did not have actual assurance. It is our intention in this case (as in every other case in which He's Alive Incorporated has filed an application) that we construct our station immediately upon grant of our application. He's Alive Incorporated has built three stations after filing applications and receiving grants. We hope to do the same in Murrysville and therefore would never presume to list a tower site for which we did not have actual reasonable assurance.

Should the Commission have any questions with respect to this matter, it may contact me at any time.

Date: April 30, 1991

A handwritten signature in cursive script, appearing to read "Dewayne Johnson", written over a horizontal line.

Dewayne Johnson
President
HE'S ALIVE INCORPORATED

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SINCLAIR BROADCAST GROUP

DAVID D. SMITH
EXECUTIVE VICE-PRESIDENT

April 25, 1991

Mr. Dewayne Johnson, President/General Manager
He's Alive Incorporated
Grantsville, MD 21536

Dear Mr. Johnson,

I am in receipt of your letter of April 18, 1991. As you may now be aware, Mr. Ardman is no longer employed with our company. We separated for a variety of reasons, not the least of which were for communicating with people like yourself and leading them to believe something other than what would have been reality. If the impressions Mr. Ardman imparted to you has caused you any difficulty, I apologize for that. With regard to our tower site being available for further rentals at this time, unfortunately it is not. There are, however, several other towers in the area which you might try.

Regards,



David D. Smith,
President

SINCLAIR BROADCAST GROUP INC.
3500 PARKDALE AVENUE BALTIMORE
MD. 21211-1477 TEL. (301) 462-4500

WBFF-TV 45 BALTIMORE; WPTT-TV 22 PITTSBURGH; WITE-TV 28 COLUMBUS; WTTA-TV 38 ST. PETERSBURG/TAMPA; WIIIB-TV 63 INDIANAPOLIS

CERTIFICATE OF SERVICE

I, Barbara P. Taylor, a secretary in the law office of Baraff, Koerner, Olender & Hochberg, P.C., do hereby certify that on this 20th day of May, 1991, copies of the foregoing document were sent first class United States mail, postage prepaid to the following:

Dennis Williams, Chief*
FM Branch - Mass Media Bureau
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Room 332
Washington, D.C. 20554

Mr. Larry Eads*
Chief Audio Services Division
Federal Communications Commission
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Washington, D.C. 20006


Barbara P. Taylor

*Via Hand Delivery